IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Civil Revision No. 308 of 2001
(Old No. 472 of 1998)

Date of decision:-21-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:-21-7-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL

Civil Revision No. 308 of 2001
(Old No. 472 of 1998)

1. Sri Kamal Kumar
2. Sri Rajesh Kumar
3. Sri Rakesh Kumar
4. M/s Ram Lal & Company
5. Mohini D/o late Ram Lal
6. Tanuja D/o late Ram Lal
7. Jyoti D/o late Ram Lal
8. Komal D/o late Ram Lal
9. Smt. Kamlesh Rani
   W/o late Ram Lal
   All R/o Ramesh Nagar, Kotdwar,
   District Pauri Garhwal ...Defendant/Revisionists

Versus

Arya Samaj Kotdwara
through its Pradhan, Nazibabad Road, Kotdwar, District-Pauri Garhwal ..Plaintiff/respondent

Sri Anil Sharma and Dinesh Gahatori, learned counsel for the revisionists.
Sri Lok Pal Singh, learned counsel for the appellants.

Hon'ble J. C. S. Rawat, J.

The present revision has been directed against the judgment and decree dated 07.10.1998 passed by the Judge Small Causes Court/District Judge, Pauri Garhwal in S.C.C. No. 3 of 1995.

The brief facts for the disposal of this appeal are that the plaintiff/respondents had field a suit for the eviction of the defendant/revisionists from the shop in dispute and for the recovery of the arrears of rent, house tax, sewerage tax and damages in the court of Judge Small Causes Court, Pauri Garhwal alleging therein that the plaintiff/respondents was the landlord of the disputed property and the father of the defendant/revisionists was a tenant @ 770/- per month excluding the house tax. After

the death of the main tenant, Ram Lal, the defendant/revisionists became the tenant by virtue of being legal heirs of the deceased, Ram Lal. It was further alleged that the provision of U.P. Act No. 13 of 1972 were not applicable I n the shop in dispute as the same was constructed in the year 1987. The notice u/s 106 of the Transfer of the Property Act was given for the termination of the tenancy of the defendant/revisionists by the plaintiff/respondent and thereafter, the suit was filed for the aforesaid relief.

The said suit was contested and the written statement was filed alleging therein that the defendant/revisionists are not in arrears of rent as alleged by the plaintiff/respondent. It was further alleged that the said building is governed by the provision of the Act No. 13 of 1971. Thereafter the defendant/revisionists sought several adjournments in this case. The evidence of the plaintiff/respondent was recorded and the cross examination was completed and the next date was fixed. On that date, the defendant/revisionists appeared but the defendant/revisionists and the learned trial court decreed the suit and held that Hem Chand-PW1 and Mahipal Singh-PW2 had proved that the said building was constructed in the year 1987 and it was also alleged that the said averment of the evidence had been proved by the documentary evidence.

Feeling aggrieved by the said order, the present revision has been preferred before this court.

It was contended on behalf of the defendant/revisionists that the trial corrupt had erred in holding that the construction of the said shop pertains to

the year 1987. The learned counsel further contended that the explanation-1 of Section 2 provides the specific provisions or the applicability of Act No. 13 of 1972 which reads as under:-

Explanation I.

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construct) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

(b)" construction: includes any new construction in place of an existing building which has been wholly or substantially demolished;

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall

be deemed to be constructed on the date of completion of the said addition.

The object of clause (a) of the Explanation-I is to have easily ascertainable date as the date of completion of the construction of a building so that in case of dispute about 10 years later, the Act becomes applicable there to the leading of oral evidence by the parties may be avoided. Perusal of the explanation provides for deeming the date of the completion of the construction of the building. This date will be either:-

1. The date on which the completion of the building is reported or otherwise recorded by the local authority having the jurisdiction.

2. Where date of completion of construction of building reported or otherwise recorded by the local authority and the date of first assessment are different the earliest of the said date.

3. The date on which the first assessment to the building comes into effect.

4. In absence of any record or assessment, the date on which it is actually occupied for the first time.

It was further contended by the learned counsel for the plaintiff/respondent that the building was completed in the year 1987 and the said assessment of the municipal authority had been filed alongwith the record. The perusal of the evidence of Hem Chand-PW1 reveals that this was the first assessment of the disputed shop. There is no other assessment of the building. The trial court had given the findings that the building was constructed in the year 1987 whereas the learned Judge Small Cause Court have to be considered the completion as has been provided

under the explanation-1 of Section 2 (a). There is no finding with regard to the explanation-1. The learned counsel for the defendant/revisionists filed the affidavit in which certain documents were filed to show that the disputed shop was completed in the year 1983. Though this document cannot be taken into consideration till the proper application have been moved before this court and the court would have allowed to take document on record. Thus this evidence cannot be taken into account. However, the learned Judge Small Causes Court had not given specific findings with regard to the explanation-1 of Clause (a) of Section 2 and he had given the findings of completion period of the construction. This court while sitting as a court of revision, this court cannot afresh appraise the evidence and give an independent findings with regard to the explanation-1 (a) of Section 2 of the Act No. 13 of 1972.

In view of the foregoing discussion, I am of the view that the judgment and decree passed by the lower court is liable to be set aside and the case is liable to be reminded to the trial court to give specific findings in view of the Clause (a) Explanation-1 of Section 2 of the Act No. 13 of 1972. It is also made clear that if the parties want to adduce the evidences, they may be permitted to adduce the Evidence before the trial court. The trial court shall dispose of the case within a period of one month from the receipt of this order. Accordingly, the revision is allowed. The revisionists will furnish an undertaking that they shall cooperate in the proceedings before the trial court and will not seek adjournment by tomorrow, i.e. on 22.07.2006. The trial court is directed to dispose of the suit within a period of one month after the receipt of the order.

Accordingly, the judgment and decree dated 07.10.1998 passed by the Judge Small causes Court / District Judge, Pauri Garhwal in Small Cause Case No. 3 of 1995 is set aside and the case is reminded to the trial court to give specific findings in the light of the observation made above.

(J.C.S. RAWAT, J.)

21th July, 2006
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